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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROYAL BANK OF CANADA, Plaintiffs, -against- TEBOGO PHIRI, Defendant.	Case No.: _________ **COMPLAINT**

Plaintiff, Royal Bank of Canada ("RBC"), through its attorneys, Paul Hastings LLP, as and for its complaint against defendant Tebogo Phiri ("Phiri"), allege as follows:

NATURE OF ACTION AND RELIEF SOUGHT

1. RBC seeks a declaratory judgment declaring unenforceable and vacating an Order on Request for Permanent Injunction entered by an arbitration panel of the Financial Industry Regulatory Authority ("FINRA") on February 15, 2017 ("the Order") in an arbitration entitled *Tebogo Phiri v. RBC Capital Markets, LLC,* Arbitration Number 16-03614 between defendant and one of Plaintiff's indirect subsidiaries, RBC Capital Markets, LLC ("RBCCM"). A real and substantial dispute exists between the parties arising out of the issuance of the Order. The Order, attached as Exhibit A, purports to grant Phiri's request for a permanent injunction. Although the Order does not state or explain what it is that RBCCM is required to do, Phiri has taken the position that it requires RBCCM to turn over unspecified, highly valuable statistical

arbitrage intellectual property ("IP") which generates tens of millions of dollars a year in revenues to RBC and its affiliates. This intellectual property does not belong to the Respondent in the arbitration; *it belongs to plaintiff here,* RBC. Yet RBC never consented to arbitrate before FINRA, was not a party to the arbitration, and did not participate in the arbitration. RBCCM repeatedly told Phiri and argued before the FINRA panel that it had the wrong party, which they ignored. A FINRA Order directing RBC's U.S. Broker-Dealer affiliate RBCCM to transfer a copy of *RBC's* valuable statistical arbitrage IP deprives RBC of its due process rights and its exclusive right to control its own intellectual property. In so doing, the Panel exceeded its authority in violation of the Federal Arbitration Act, 9 U.S.C. §10(a)(4) and analogous New York state law provisions, CPLR §7511 (b)(1)(iii) and (2)(i).

2. Aside from the Order's fundamental assault on RBC's due process rights, the Order places RBC at serious and imminent risk of immediate and irreparable harm. If RBCCM is forced to turn over RBC's IP, RBC would lose control over its proprietary property. The IP at issue, which includes software implementing certain equity trading strategies, generates signals guiding its user to purchase or sell securities that are frequently available only in limited quantities. If more than one party attempts to use the same IP, other parties would be directly competing for the same limited assets, thus impacting the IP's overall value. RBC's own IP will be instantly less valuable to RBC if the same IP is being used by Phiri. The impact of this degradation will be immediate and substantial but impossible to quantify—the essence of irreparable harm.

3. The need for relief is extremely urgent. Without waiting for the courts to adjudicate whether the arbitrators exceeded their authority in making an award that so profoundly injures a non-party which never agreed to submit its disputes to arbitration, counsel

for Phiri has tried to coerce RBC's U.S. Broker-Dealer affiliate RBCCM into turning over RBC's IP by writing to the CEO of FINRA, the U.S. regulatory body which authorizes RBCCM to sell securities in the United States, demanding that if RBCCM does not turn over RBC's IP immediately, FINRA should suspend RBCCM from membership, effectively making it impossible for RBCCM to continue to operate in the United States. The letter is attached as Exhibit B. Unless restrained, such actions threaten to place RBC's U.S. Broker-Dealer subsidiary out of business, causing RBC additional irreparable harm.

4. Accordingly, RBC also seeks temporary and preliminary injunctive relief restraining Phiri and those acting in concert with him from taking steps to acquire RBC's IP from RBCCM pending further action by this Court on RBC's request for declaratory relief and request to vacate the Order.

THE PARTIES

5. Royal Bank of Canada is a corporate body organized and existing under the laws of Canada with its principal place of business at 200 Bay Street, Royal Bank Plaza, Toronto, ON M5J 2J5. It is the owner of all intellectual property created by its subsidiaries and affiliates, including the IP at issue here.

6. Tebogo Phiri is an individual residing, on information and belief, at 450 North End Avenue, Apt 19F, New York, New York 10282 and is a citizen of the State of New York.

JURISDICTION AND VENUE

7. This is an action for a declaratory judgment pursuant to 28 U.S.C. § 2201 to declare unenforceable and vacate an Order entered by a FINRA panel in an arbitration occurring in this District, *Tebogo Phiri v. RBC Capital Markets, LLC,* Arbitration Number 16-

03614 and to prevent Phiri from taking action to enforce the Order pending determination of RBC's rights in this proceeding.

8. This Court has subject matter jurisdiction over the dispute under 28 U.S.C. §1332 because the matter in controversy exceeds the sum or value of $75,000, exclusive of interests and costs, and is between a citizen of a State and a citizen of a foreign state.

9. This Court has personal jurisdiction over Phiri because Phiri resides in the District and commenced the arbitration in this District.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

FACTS

11. Royal Bank of Canada is a leading global bank providing expertise in banking, finance and capital markets to corporations, institutional investors, asset managers and governments.

12. Over the past twenty years, employees working for a variety of RBC subsidiaries and affiliates including RBCCM have developed statistical arbitrage ("stat arb") IP which has historically generated tens of millions of dollars in revenues to RBC and its affiliates and subsidiaries annually.

13. RBC owns and controls the rights to the IP and has the exclusive right to control its use. RBC licenses RBCCM to use some of the IP but that license is non-transferable and does not authorize RBCCM to transfer, sell or sublicense the IP.

14. Phiri was employed by indirect subsidiaries of RBC from 1997 until October 31, 2016. He ran a stat arb team for RBCCM and, in his last position, headed a stat arb trading team for RBC (Barbados) Trading Bank Corporation ("RBTB").

15. RBCCM, as a U.S. Broker-Dealer, is required to be a member of FINRA in order to sell securities in the United States. Membership requires RBCCM to arbitrate all disputes with its associated persons, including certain former employees, before FINRA.

16. RBC, a Canadian Bank, is not a member of FINRA and is not required to agree and has not agreed to arbitrate any disputes before FINRA.

17. On December 12, 2016, Phiri filed a Petition in New York State Supreme Court pursuant to Section 7502(c) of the NY CPLR seeking an order in aid of arbitration requiring his previous employer, the U.S. Broker-Dealer RBCCM, to preserve certain statistical arbitrage intellectual property and participate in expedited discovery. The court entered a temporary injunction requiring such preservation and denied Phiri's request for expedited discovery. *Tebogo Phiri v. RBC Capital Markets, LLC*, Index No. 656455/2016 (dkt. no. 10).

18. Based on the state court's issuance of a temporary restraining order requiring preservation, Phiri sought an expedited hearing before FINRA to consider his request for a permanent injunction ordering RBCCM to *transfer* unspecified IP to him on only 15 days' notice. Over RBCCM's objection, FINRA allowed the improper request for permanent relief to proceed, on an expedited basis, and Phiri plunged ahead.

19. RBC, plaintiff here and the owner of the IP at issue, never agreed to arbitrate before FINRA and did not participate in the arbitration hearing.

20. RBCCM repeatedly advised Phiri and the FINRA Panel that RBCCM was the wrong party for Phiri's actions. These warnings were ignored. On February 15, 2017, the FINRA Panel issued the barest of bare bones Orders, attached hereto as Exhibit A. Using a "check the box" form, the Panel circled the word "Granted" and added the word "immediately," but gave no other indication of the scope of its order or the basis for its decision. The Panel's

Order states in a footnote: "In addition, the panel determines that it has jurisdiction over the Respondent, RBCCM, and that RBCCM is the appropriate respondent."

21. The panel was not asked to decide and did not decide that RBCCM owns the IP at issue. It does not.

22. The Order has not been confirmed by any court.

23. While the Order does not identify what RBCCM is supposed to do to comply with the Order, Phiri has taken the position that the Order requires RBCCM to transfer a copy of some stat arb IP to Phiri and to do so immediately, even before judicial review of the Order. RBCCM does not own the stat arb IP, however—RBC does. As a result, the Order (as interpreted and attempted to be enforced by Phiri) is directed to terminating RBC's exclusive right to control its IP, even though RBC did not consent to have its rights determined in arbitration. RBC's loss of the exclusive right to control its own IP will cause irreparable harm, degradation of its IP, and monetary loss in an amount that cannot be quantified.

24. Phiri has also attempted to augment the Order by adding and attempting to enforce through threats and other means terms that appear nowhere in the Order. In particular, he has taken the position that RBCCM is now obliged to turn over immediately computer programs and files never mentioned in the Order. These files comprise *RBC's* IP underlying the statistical arbitrage trading platform, which has historically generated tens of millions of dollars in revenue annually.

25. This IP does not belong to the Respondent in the Arbitration, RBCCM. Rather, it belongs to plaintiff here, RBC.

26. Phiri's attempts to enforce the Order before this Court has an opportunity to review and vacate the Order will cause RBC to suffer damage and injury to its business,

reputation and goodwill and to sustain substantial loss of revenues and profits while unjustly enriching Phiri.

27. Unless enjoined by this Court, Phiri's attempts to enforce the Order before this Court has had an opportunity to declare RBC's rights and to review and vacate the Order will cause RBC to suffer immediate and irreparable harm. RBC has no adequate remedy at law.

COUNT I

Declaratory Judgment Under 28 U.S.C. § 2201 that the Arbitration Order Is Unenforceable

28. The allegations set forth in paragraphs 1 through 27 are incorporated herein by reference.

29. The Order was issued in an arbitration between RBCCM and Phiri. There is an actual case or controversy between the parties over whether Defendant is entitled to enforce the Order as to RBC's IP.

30. The Order was issued just last week, on February 15, 2017. Already Defendant has requested that RBC's indirect subsidiary be suspended from FINRA membership to coerce RBC to direct RBCCM to turn over a copy of RBC's IP to Phiri.

31. A real, substantial and immediate dispute exists between the parties arising out of the Order.

32. RBC is suffering and will continue to suffer imminent and irreparable harm to its substantial rights unless RBC's rights are declared.

33. Unless RBC's rights are promptly adjudicated and declared Defendant will continue to act in violation of RBC's rights.

COUNT II

Vacatur of the Arbitration Order Under 9 U.S.C. §10(a)(4) and CPLR §7511(b)(1(iii) and (2)(i)

34. The allegations set forth in paragraphs 1 through 33 are incorporated herein by reference.

35. The Order was made by a FINRA panel in this District.

36. The Order is subject to the requirements of the Federal Arbitration Act, including 9 U.S.C. § 10(a)(4), and analogous New York state law provisions, CPLR § 7511 (b)(1)(iii) and (2)(i), which provide for the vacatur of arbitral awards where the arbitrators exceed their powers.

37. RBC did not consent to have its rights to its IP determined in arbitration. RBC is not a member of FINRA, did not agree to arbitrate before FINRA, was not named as a party in the arbitration and did not participate in the arbitration.

38. To the extent that the Order requires RBCCM to provide Phiri with a copy of any stat arb IP, the Order exceeds the powers of the arbitrators, as the arbitrators did not have power to adjudicate or alter RBC's rights to the exclusive control of RBC's IP.

39. RBC is suffering and will continue to suffer imminent and irreparable harm to its substantial rights unless the Order is vacated in its entirety.

40. The Order should be declared unenforceable and vacated in its entirety as being beyond the power of the arbitrators.

WHEREFORE, RBC respectfully requests that this Court enter judgment and additional relief in its favor and against Phiri as follows:

a. Declaring that the Arbitration Order is unenforceable to the extent that it directs or has the effect of requiring RBCCM to turn over RBC's property;

b. Declaring unenforceable and vacating the FINRA Order on Request for Permanent Injunction; and

c. Temporarily, preliminarily and permanently enjoining Phiri and those acting in concert with him from taking any action to attempt to enforce the February 15, 2017 Order on Request for Permanent Injunction entered by FINRA in *Tebogo Phiri v. RBC Capital Markets, LLC,* Arbitration Number 16-03614 pending hearing and determination of RBC's application for a declaratory judgment and other relief by this Court; and

d. Granting such other and further relief as seems just and appropriate.

Dated: New York, New York
February 21, 2017

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